the bills must generally be passed on very hastily. Finally, defects or errors in indictments are remedied only with great difficulty and delay.

In many of these respects a single responsible official would be an improvement. The old reasons no longer deter us from intrusting to an officer of the government the power of putting men on trial for criminal offences. What we do have to guard against now is the misuse of such a power by reason of bribery, partisanship, or personal spite. On the one hand, proper prosecutions must not be suppressed; on the other, improper ones must not be commenced. An ample safeguard against the first evil is furnished in all our States by the retention of the indictment beside the information. In our law any person may set the courts in motion. On the Continent the Public Prosecutor does not, to be sure, possess the power of indicting or putting a suspected person on trial. That is done by a court, consisting generally of three judges. But the Prosecutor has the sole power, except in a few cases, of starting the preliminary examination. That is not desirable here, and is not likely to become the law in any of our States.

On the other hand, where our district-attorneys are invested with the power of proceeding by information in a large number of criminal cases, the law must guard the public from the institution of proceedings from corrupt or improper motives, as for purposes of extortion, for instance. Here the California statutes seem to have devised a sufficient protection by requiring a preliminary examination and commitment before the filing of an information (Deering's Pen. Code, §§ 809, 888). Apparently the Connecticut statutes provide no similar safeguard. In both States the information is frequently used, and apparently with the decided approval of the legal profession and the public generally. It would seem as if the example set by California were worthy of careful consideration in other States. Our criminal procedure is likely to receive considerable attention before very long. Lynching is not the only protest against its defects. There is a pretty general belief that some radical changes might be made with advantage (*cf.* the article by Mr. H. W. Chaplin in 7 HARVARD LAW REVIEW, 189). Possibly our law treats the prisoner with too much consideration. Certainly a criminal cause often proceeds at an aggravatingly slow pace and any reform looking toward the diminution of delays is desirable.

RECENT CASES.

BILLS AND NOTES — NEGLIGENCE. — Defendant accepted a £500 bill on a stamp sufficient for a £4,000 bill, so drawn that it was easily changed to £3,500, and afterwards bought by plaintiff in good faith. *Held*, affirming the decision of CHARLES, J. (63 L. J. Q. B. 649), that there was no duty of care toward plaintiff and no estoppel to set up the alteration. *Scholfield* v. *Earl of Londesborough*, 11 *The Times* Law Rep. 149. Compare *Young* v. *Grote*, 4 Bing. 253, and see NOTES.

CARRIERS — DROVER'S PASS — UNLAWFUL EJECTMENT. — Where a railroad contracts to transport live stock to a point on a connecting road, with an express limitation of liability to its own line, and at the same time issues a drover's return pass through to the destination of the stock, with no such limitation. *Held*, the liability of the first railway is not limited to wrongs suffered by the drover as a passenger on its own line, but it is responsible for his unlawful ejectment from the train of the connecting carrier. *Gulf, C. & S. F. Ry.* v. *Cole*, 28 S. W. Rep. 391. FISHER, C. J., dissenting. See NOTES.

CONFLICT OF LAWS — DEATH BY WRONGFUL ACTS — LIMITATIONS. — By the statute of Montana giving a right of action for death the action must be brought within three years; by the statute of Minnesota but two years are allowed. The deceased was killed in Montana, and the action brought in Minnesota more than two years, but less than three years after the death occurred. Defendant set up the limitation in the Minnesota statute. *Held*, the limitation of the Montana statute governs. *Theroux* v. *Northern Pacific R. Co.*, 64 Fed. Rep. 84.

The court bases its decision on *Boyd* v. *Clark*, 8 Fed. Rep. 849, where it was held that where a statute gives a right of action unknown to the common law, and limits the time within which the action may be brought, the bringing of the action within that period is a condition to the right, and that if the action is brought in a foreign court after the period prescribed has elapsed, no recovery can be had. This proposition does not seem to necessitate or sustain the holding of the court in the principal case. Limitations usually are governed by the *lex fori*, and cases like *Boyd* and *Clark* form a notable exception to that rule. Plaintiff here has complied with the condition upon which the Montana statute gave her the right; but, it is submitted, she should not recover in a jurisdiction whose laws provide that no action of this sort shall be brought after a specified time, which time has elapsed.

CONSTITUTIONAL LAW — COMMON LAW OF THE UNITED STATES. — *Held*, by Grosscup, District Judge, affirming his decision reported in 58 Fed. Rep. 858, that there is no common law of the United States, and that therefore prior to the passage of the Interstate Commerce Act no recovery could be had from a common carrier for excessive charges for carriage between States; since interstate commerce is a subject over which State laws cannot extend, and no law applicable to it had at that time been made by the United States. *Swift* v. *Philadelphia & R. R. Co.*, 64 Fed. Rep. 59.

In his opinion in this case Judge Grosscup ably maintains the position he has assumed, in spite of the contrary decision of Judge Shiras in *Murray* v. *Chicago & Northwestern Ry. Co.*, 62 Fed. Rep. 24.

See Notes, 7 HARVARD LAW REVIEW, 488; 8 HARVARD LAW REVIEW, 168.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — INTERSTATE COMMERCE. — A New York statute required that all goods made by convict labor in any State, except New York, should be labelled "convict made," before being exposed for sale. *Held*, the act was unconstitutional; first, because it operated upon property owned at the time it took effect; and secondly, because it discriminated between convict-made goods of foreign States and those of New York. *People* v. *Hawkins*, 31 N Y. Sup. 115.

The second ground for the decision of the case is unquestionably correct, but the first is less satisfactory. It is evident that the direct result of such a requirement as this statute imposes would be to put convict-made goods in contempt and restrict their sale. But however this may be, it is none the less within the power of the legislature to enact such a statute, and this the court does not deny, but it insists that the regulations should operate only on those goods manufactured or imported after the passage of the act. In support of this position the court relies upon the case of *Wynehamer* v. *People*, 13 N. Y. 378, which is no doubt to the same effect as to an invasion of vested rights. Such a distinction cannot be approved. Hare's Const. Law, pp. 776, 777. The better view would seem to be to regard such regulations, provided they are fair and reasonable, with whatever restrictions they may incidentally involve, as within the customary power of the legislature, the legitimate exercise of which is not precluded by the Constitution. Hare's Const. Law, pp. 765, 766.

CONSTITUTIONAL LAW — LIQUOR LICENSE — SALE. — The respondent, an incorporated society of limited membership, maintained a club-house in St. Louis. Wines and liquors were served without profit to the members and their guests upon the former's acknowledging the receipt of the liquor and its price, which was thereupon charged to the account of each, to be paid monthly. The club was not licensed under an act regulating the sale of intoxicating liquors. *Held*, a distribution of liquor belonging to the club among its several members is not a sale within the act. Each member receiving the liquor was a co-owner with all the other members, and the transaction was a mere transfer of the special property of the other members to him. *State ex rel. Bell* v. *St. Louis Club*, 28 S. W. Rep. 604.

If a legislature wishes to prohibit the use of liquor in club-houses, which it may doubtless accomplish, the statute for the purpose must do more than forbid its sale. When two or more are collectively the owners of property, they may unite in good faith in dividing it; but if their association with the object of co-ownership is simply a device to defeat the law and evade the license fee, the courts will be quick to perceive the fraud and deal with it as such. The *bona fides* of the association is the test. The decisions fall on one side or the other, as this is made out. The case follows the gene-

ral principle established in other jurisdictions, and is chiefly interesting because the subject is one of first impression in Missouri. For collection of cases, see Black on Intoxicating Liquors, § 142, notes.

CONSTITUTIONAL LAW — TAXATION — VALIDITY OF ASSESSMENT. — The defendant company owned a bridge across the Ohio river, between Kentucky and Indiana. The State board of tax commissioners of Indiana made an assessment upon the property of the company within the State, but by mistake included in such assessment a portion of the bridge in Kentucky. *Held*, the judgment on its face related to property within the jurisdiction of the board, and in the absence of fraud could not be set aside by evidence *aliunde* or by matters dehors the record. *Youngstown Bridge Co.* v. *Ky. & Ind. Bridge Co. et al.*, 64 Fed. Rep. 441.

In the exercise of *quasi* judicial power, with final jurisdiction in questions relating to valuation and assessment, the board was justly considered like a superior tribunal in regard to its record. Though the judgment was erroneous there was no remedy. Such a view finds abundant support. Freeman on Judgments, § 135.

CONTRACTS — CONSTRUCTION — EFFECT OF PRINTED MATTER ON LETTER-HEAD. — Defendants mailed to plaintiffs an offer for the sale of sheet-iron, which defendants manufactured. Plaintiffs, refusing defendants' proposals, submitted a contract complete and express in terms, — which defendants accepted. The written part of their acceptance was absolute, but the words, "All sales subject to strikes and accidents," were printed upon the heads of both letters of defendants. In a writ upon the contract it was *held*, that the printed matter formed no part of the contract, so as to excuse a failure to deliver, caused by breakages in defendants' mills. *Summers* v. *Hibbard*, 38 N. E. Rep. 899 (Ill.).

This case goes farther than any authority cited in support of it. In *Express Co.* v. *Pinckney*, 29 Ill. 392, the company undertook to collect a draft and remit the proceeds. Their agent gave the customer an ordinary package receipt, with its blanks properly filled out for the special purpose contemplated. It contained printed conditions appropriate to the carriage of goods, which conflicted with the written matter, and the court *held*, that the writing only was to be considered in ascertaining the contract. *People* v. *Delany*, 96 Ill. 503, was a like decision, the written and printed parts of a contract for the hiring of convicts being plainly inconsistent. *Robertson* v. *French*, 4 East, 130, contains a *dictum* by Lord Ellenborough to the same effect, and the point was similarly decided in *Alsagar* v. *Dock Co.*, 14 M. & W. 196. In all these cases, there was plain inconsistency between the written and printed parts, and the Court attempt to bring the present case within the principle, by saying that it is inconsistent that the contract should be both absolute, as shown by the writing alone, and conditional, as shown by the writing and printing together. See Parsons on Contracts (8th ed.), Vol. II. p. 633, and cases cited.

CONTRACTS — CONTRACT BY HEIR RELINQUISHING INTEREST IN ANCESTOR'S ESTATE — RELEASE OF RIGHT TO CONTEST WILL. — An heir for valuable consideration made a written agreement with his ancestor, whereby he relinquished all interest in the latter's estate, which might otherwise in the future vest in him as such heir, and covenanted with her, "her heirs, devisees, legatees, executors, and administrators," that he would "never in any manner, or to any extent, question, dispute, or contest any disposition of the property which she may have made, or may hereafter make, either by deed, or by her last will and testament." In this petition by the heir, to revoke the probate of an instrument purporting to be the will of the ancestor, on the ground of incapacity and undue influence, it was *held*, that the petitioner was estopped by his agreement from contesting an instrument, executed in due form, as the will of such ancestor, whether or not testatrix had the capacity, or was induced by undue influence to make it, and that such agreement is not void as against public policy, even though it estops the heir from contesting the will of an insane person, or a will executed under the influence of fraud or duress. *In Re Garcelon's Estate*, 38 Pac Rep. 414 (Cal.).

The Court call attention to the difference between the rules of common law and equity as applied to the sale or assignment of mere possibilities, such as the expectancy of an heir apparent; how at common law such interests are not regarded as existing in such a way as to be the subject of a sale, or capable of passing by assignment, whereas in equity agreements for the sale or release of expectancies, if fairly made, and for an adequate consideration, are enforceable upon the death of the ancestor. 2 Story Eq. Juris., § 1040 *c*. In holding that the contract in question is not void as against public policy, the Court distinguish it from agreements in restraint of marriage or of lawful trade. "The contract is one which concerns the parties alone, and does not appear to us to be against public policy."

CONTRACTS — WHEN PLAINTIFF CAN ANNUL AND SUE FOR FUTURE PROFITS.— Defendant violated provisions of an executory contract made with the plaintiff, and showed an intention to continue such breaches, but did no act amounting to a physical obstruction or prevention of performance by the latter. *Held*, plaintiff could elect to treat the contract as at an end and sue for future profits. *Lake Shore, &c. Ry.* v. *Richards*, 38 N. E. Rep. 773 (Ill.).

This case was decided on a rehearing, and reversed the decision of the court on the former hearing, 32 N. E. Rep. 402, where the court held that absolute prevention or such an essential breach as amounted to prevention was necessary. The decision as it now stands seems clearly right on principle, and the numerous authorities referred to by the court. Where a party to a contract says he will not go on with it, or does acts showing that he will not, if the conduct or acts are such as to make a breach going to the essence of the contract, the other party should not be kept in suspense or be obliged to perform to no avail if he wants to recover. Such a requirement would be unjust and increase the damage and inconvenience of both parties. The rights of the parties should in case of such a contract be fixed at the time of the substantial breach, and plaintiff should be relieved from useless performance and recover for future profits.

CORPORATIONS — LIABILITY OF CORPORATORS. — Wisconsin statute provided that any three persons might form a corporation by signing and acknowledging articles declaring the purpose, amount of capital stock, etc., and that after such articles were filed the signers should have direction of the corporation, but that no such corporation should transact business with any other than its members until half the capital had been subscribed and twenty per cent paid in. After three persons had signed such articles, and before any stock had been subscribed for, two of the signers carried on business in the corporate name and incurred liability. The third signer knew that the others were carrying on business in the corporate name, and by slight attention to the matter could have learned that they were using his name as an officer. In an action for liability thus incurred brought against the three signers, *held*, that all three were liable. *Wechselberg* v. *Flour City Nat. Bank*, 64 Fed. Rep. 90.

The liability of the third signer under these circumstances must depend on a simple question of fact, — whether he has expressly or impliedly authorized the others to act for him. This is the view of the dissenting judge, who is clearly of opinion that no such authority was given. Judging from the facts as reported it is certainly hard to find any authority. The majority of the court finds it in the signing of the articles, but despite a conflict in the cases, the better view is that the signing of the articles does not make the signers partners. *Rutherford* v. *Hill*, 22 Ore. 218; *Bank* v. *Palmer*, 47 Conn. 443; Morawetz on Corporations, § 748.

CRIMINAL LAW — EXTORTION — ATTEMPT TO COMMIT. — By New York Penal Code, § 552, "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right." By § 34, "An act done with intent to commit a crime, and tending, but failing to, effect its commission, is an attempt to commit that crime." *Held*, although the prosecutrix was not put in fear by defendant's threats, but parted with her money for the purpose of inveigling him into the commission of the crime, that an indictment for an attempt to commit extortion would lie. *People* v. *Gardner*, 38 N. E. Rep. (N. Y.) 1003; overruling *People* v. *Gardner*, 25 N. Y. Supp. 1072, commented on 7 HARVARD LAW REVIEW, 435. See NOTES.

CRIMINAL LAW — SUFFICIENCY OF INDICTMENT — JUDICIAL NOTICE. — The caption of an indictment contained the name of the county of Worcester, the accused was described as being a resident of B. in the county of Franklin, and the offence was alleged to have been committed "at Westminster, in said county." *Held*, the indictment is defective in not stating with sufficient certainty the county in which the offence was committed. "While the court knows that there is a town named Westminster in the county of Worcester, there is no allegation that the offence was committed at the town of Westminster, but simply at Westminster, which is not alleged to be a town or a place within the county of Worcester." *Commonwealth* v. *Wheeler*, 38 N. E. Rep. 1115 (Mass.).

The rule that when two counties are named it is not enough to describe the offence as committed in the "county aforesaid," would not seem to apply to cases where the offence is described as committed in a particular place in the "county aforesaid," because a court will generally take judicial notice of the location of places within its own jurisdiction. See 8 HARVARD LAW REVIEW, 360. Therefore an allegation of the particular place in which it was committed would be equivalent to stating that it was committed within the county where the place is located. *People* v. *Breeze*, 7 Cow. 429. In that case two counties are mentioned in the indictment, and a statement that the offence

was committed "at the town of F., in said county," was held to be a sufficient allegation of the county in which the offence was committed, because the court will take judicial notice that F. is in a certain county. That case is distinguished from the principal case on the ground that here there is no allegation that the offence was committed at the town of Westminster, but simply at Westminster. For this flimsy and technical distinction the court relies upon *Commonwealth* v. *Barnard*, 6 Gray, 488. The court admits that it "knows that there is a town named Westminster in the county of Worcester." Would it then be too great a relaxation of the rule requiring an indictment to be certain, if the court were to interpret "at Westminster" as meaning "at the town of Westminster"?

DAMAGES — INJURY TO A FISH-NET FROM FLOATING LOGS. — Evidence of the value of fish usually caught is admissible in an action for damages to a trap caused by floating logs. *Gwaltney* v. *Scottish Carolina Timber & Land Co.*, 20 S. E. Rep. 465 (N. C.).

This case illustrates the importance to the practising lawyer of a correct understanding of the law of damages in order to enable him to get before a jury the several items of his client's loss. There is a great tendency to forget that evidence of this kind is simply to be regarded as bearing on the amount of the loss, and to claim that it should be admitted or rejected by some hard and fast rule of law. There is no question but that this evidence, if offered simply as showing the profits which the plaintiff had been making from his trap would have been promptly excluded as irrelevant. If testimony in regard to previous profits was the only evidence presented that bore on the damage suffered, it might also be rejected as speculative and conjectural. *Wright* v. *Mulvaney*, 78 Wis. 89. But the plaintiff is undoubtedly entitled to the cost of repair of his net, and also to its value during the time the defendant has deprived him of its use. One perfectly legitimate method of showing its value is to show what it has been worth from day to day in the fish-catching way, and it is believed that if evidence of the amount of fish caught were to be offered as bearing on this point, other testimony being submitted to show a continuance of former conditions, it could not be rejected.

DAMAGES — WAGES OF OPERATIVES NOT RECOVERABLE FROM A CONTRACTOR IN DEFAULT. — Where a contractor does not furnish mill machinery at the agreed time, and the owner thereby is obliged to pay wages to his operatives during a period of enforced idleness, *held*, such wages are not an item recoverable in damages from the contractor when the workmen were hired after the making of the contract, as the loss of their wages could not have been in the contemplation of the parties. *Fraser* v. *Mining Co.*, 28 S. W. Rep. 714 (Texas).

The court in this case reach the correct result that prospective profits which might have been earned during the period of delay cannot be recovered. But the doctrine in regard to wages seems to have received little consideration, and not to be justified by authority. It is submitted that notice is given by the nature of the agreement itself, that operatives will be under contract to begin work as soon as the machinery is in place, and the loss of their wages to the employer therefore follows as a natural and proximate result of the breach. This is held in *New York Syndicate* v. *Fraser*, 130 U. S. 611, a leading case which does not seem to have been called to the attention of the court.

EQUITY — MANDAMUS — INTERFERENCE BY CIVIL COURTS IN THE AFFAIRS OF A RELIGIOUS SOCIETY. — Where a bishop acting under his discretion, in accordance with the canons of the church, refuses to allow a clergyman to officiate, *held*, a mandamus will not issue at the suit of the rector, wardens, and vestry, to remove such inhibition. *Rector, &c., of St. James Church* v. *Huntington*, 31 N. Y. Supp. 91.

Under the New York statute, the plaintiff (which would ordinarily be a voluntary association, and sue in the name of trustees) is an organized corporation, and sues in its corporate name. 2 Rev. Stat. of 1813, p. 212. Its rights however are in no way more extended than those of any other private corporation, and the present case is to be decided simply on the principles of the common law applicable to such bodies. Tyler, Am. Ecc. Law, §§ 104, 105; *Calkins* v. *Cheney*, 92 Ill. 463. Accordingly, the power of a civil court to interfere in an ecclesiastical suit is very limited. It has no general visitorial capacity, and can take cognizance only in cases of abuse of trust, fraud, rival claims to church property, and where civil rights are directly involved. *O'Hear* v. *De Goesbriand*, 33 Vt. 593; *Church of Hartford* v. *Witherell*, 3 Paige Ch. 296. Thus mandamus will not lie to compel a religious society to reinstate an expelled member if such sentence does not affect his civil rights. *Sale* v. *Church of Mason City*, 62 Ia. 26. It has also been held that want of authority in the judicial body, and a misconstruction of the canon on which the defendant is being tried furnish no ground for interference. *Chase* v. *Cheney*, 58 Ill. 527. The canon requires a clergyman to procure the assent of the bishop to his induction into a new parish, and allows the latter to decline to give this for probable cause. If such assent is withheld no binding contract with

the vestry of the new church can be made, and there can therefore be no reason for the intervention of equity to aid in enforcing what does not exist.

EVIDENCE — ENTRIES IN MEMORANDUM BOOK. — To prove the quantity of logs scaled during the winter, the defendants offered in evidence a book, kept by their foreman, containing daily entries made by him. The foreman and F., the man who did the work, at the end of each day used to figure up the total amount of logs scaled during the day, from tally-boards kept by F., and the foreman set down the amount in the book in question. F. could not be found so as to obtain his testimony with regard to the scale. *Held*, the entries are not admissible unless supplemented by the testimony of the person furnishing the original data, since they were not made by one having a personal knowledge of the facts which he recorded. *Chicago Lumbering Co* v. *Hewitt*, 64 Fed. Rep. 314.

In *Mayor, etc., of N. Y.* v. *Sec. Ave. Railroad Co.*, 102 N. Y. 572, where similar entries were let in, they were accompanied not only by the testimony of the foreman who made the entries, that he correctly entered the amounts as reported, but by that of the man who had personal knowledge, that he reported the facts correctly to his foreman. Unless accompanied by this supplementary testimony, it seems to be the general rule, as stated in the principal case, that the party making the entry must have personal knowledge of the fact which he records. (See cases cited in the opinion.) There has been, however, a slight relaxation in this rule in *Curren* v. *Crawford*, 4 Serg. & Rawle, 3, where the person making the entry knew nearly all the facts which he recorded, but not all; and the entry was admitted without the supplementary testimony of the man who did the work.

INSURANCE — LIMITATION IN POLICY. — A policy of insurance against death from an accident stipulated that an action thereon must be brought within one year from the date of the happening of the alleged injury. *Held*, that the limitation begins to run from the death of the insured, and not from the time at which the right of action accrues. *McFarland* v. *Railway Acc. Ass'n*, 38 Pac. Rep. 347 (Wyo.).

In fire insurance policies, the courts have gone very far in holding similar clauses to run only from the accruing of a right of action, in analogy to the statutes of limitation. But in the principal case the court refuse to follow these authorities in interfering with the plainly expressed intent of the parties, and say that in accident policies at least, the language must govern when clear. This would seem right on principle, though, doubtless, a scintilla of ambiguity would be seized to avoid the result.

PERSONS — HUSBAND AND WIFE — RIGHT OF HUSBAND'S CREDITORS TO PROFITS OF WIFE'S ESTATE. — Where a husband engaged in business with his wife's capital in her name, on her credit, and for her benefit, and owing to his labor and special skill large profits accrued, *held*, after deducting the necessary expenses and indebtedness of the business, and the support of the family, a court of equity will apportion the profits between the wife and the existing creditors of the husband. *Boggess* v. *Richard's Adm'r*, 20 S. E. Rep. 599; *Vance* v. *Richard's Adm'r*, 20 S. E. Rep. 603.

This decision is opposed to the generally accepted rule of law that a man may give away his labor, but it is supported by many dicta, and by at least one decision, *Murphin* v. *Taylor*, 16 Ohio St. 509, and seems eminently fair. The courts go on the principle that anything beyond the usual profits, due to the husband's labor and skill, is not properly a part of the profits of her separate estate, but is the result of the husband's skill, and that to allow the wife to take it all would be a fraud upon the husband's creditors.

PERSONS — PRESUMPTION OF COERCION OF WIFE BY HUSBAND. — Mary Moore was convicted of perjury at the trial of her husband and excepted on the ground that the rulings below were not correct. Those rulings, evidently, were that there was the presumption that she acted under the control of her husband, but it could be rebutted. *Held*, rulings were correct. Under the Massachusetts statute which provides that the wife shall not be compelled to be a witness on the trial of the complaint against her husband, the fact that she takes the stand, is evidence to rebut the presumption. Lathrop, J., also says that where a wife testifies in a complaint against her husband under the statute in question, there is no room for the application of the rule that there is a presumption of coercion. *Commonwealth* v. *Moore*, 38 N. E. Rep. 1120 (Mass.).

This presumption of coercion in criminal cases seems to have preserved a place in our law long after all reason for it has passed away. Under our Married Women's Acts the wife is a very independent person, and the rule, founded on mediæval conceptions, seems inapplicable. In the Penal Code which Stephen, Blackburn, and others prepared, it was proposed to abolish this presumption. The fact that the courts refuse to apply it in the cases of heinous crimes would also seem to show that it has no foundation in fact. The courts might have said that the Married Women's Acts took away

the reason of the rule, and that the rule should end; but they refused to take this step. 97 Mass. 547; id. 225–229. Under the statute in the principal case it seems plainer, however, that the legislature did not intend the old presumption to continue.

PROPERTY — ACCESSION. — The plaintiffs made and baled hay on the defendant's land, under a *bona fide* claim of right. The defendant interfered with its removal, and the plaintiffs bring replevin. *Held*, that since the plaintiffs took the grass in good faith, and greatly increased its value, the defendant making no effort to stop them, the title has changed, and the defendant is left to his action for the value of the grass. *Carpenter* v. *Lingenfelter*, 60 N. W. Rep. 1022 (Neb.).

The court follow the decision in *Wetherbee* v. *Green*, 22 Mich. 311, making a great change in value sufficient to pass title, though there has been no such change in substance as was required by the old rule of accession. The other cases cited, while in form actions of replevin, were in fact for damages only, and hence are not authorities for this decision. The earlier Nebraska case, *Baker* v. *Meisch*, 29 Neb. 227, involved a change from clay to bricks, which might well go upon the stricter rule, so that *Wetherbee* v. *Green* is the only case directly in point. The court dwell upon the fact of good faith, which it would seem should not affect the question of title at all.

PROPERTY — ADVERSE POSSESSION — NOTICE. — Tenant for years remained in possession after the end of the term, and received a deed of the land from one claiming title under a tax sale. He continued in possession as before, and in suit to quiet title set up this possession under the deed as adverse to his lessor and those claiming from him. *Held*, that the mere recording of the deed was not notice to the lessor, but that there must be some unequivocal act to mark a change in the character of the possession before the statute would begin to run. *Millett* v. *Lagomarsino*, 38 Pac. Rep. 308 (Cal.).

The case is right. The doctrine of constructive notice from recording deed cannot apply in such a case, and knowledge of the claim of right must be brought to the landlord by some act inconsistent with the tenancy.

PROPERTY — BAILMENT — ESTOPPEL. — G. having sugar warehoused with defendants, arranged that they should hold it subject to the order of F. F. sold to plaintiffs, who had defendants transfer the sugar to them on the warehouse books. The fraud of F. appearing, G. persuaded defendants to refuse the goods on the plaintiffs' demand. *Held*, that defendants were estopped to deny the plaintiffs' title, and liable for a conversion accordingly. *Henderson* v. *Williams*, 29 L. J. 766; 11 *The Times* Law Rep. 148. See NOTES.

PROPERTY — EMINENT DOMAIN — CONFLICTING PUBLIC USES. — *Held*, that land owned by a street-railway company, and used by it as a horse barn and a warehouse for property used in its business of public carrier, but on which it has no tracks, may be condemned by an elevated railroad company for its right of way. *Chicago W. D. Ry. Co.* v. *Metropolitan W. S. El. R. R. Co.*, 38 N. E. Rep. 736 (Ill.).

The court seem to make this case turn on whether the property condemned would include tracks used as rights of way by the defendant. It is submitted that this is not the true test, but that a sounder rule is laid down in *C. W. & M. R. R. Co.* v. *City of Anderson*, 38 N. E. Rep. 167 (Ind.), where it was held that buildings used by a railroad in the operation of its road could not be condemned, even for a highway. For comment on that case and authorities, see 8 HARVARD LAW REVIEW, 289.

PROPERTY — LEGACY TO CHARITABLE INSTITUTIONS — CY-PRES. — The testator's will contained a clause worded thus: "I give the following charitable legacies." Here follows a number of legacies to charitable institutions, among which is this one, on which the action is founded: "to the rector for the time being of St. Thomas Seminary, for the education of priests in the diocese of Westminster, for the purposes of such seminary, £5,000." St. Thomas Seminary was an existing institution when the will was made, but was dissolved previous to the death of the testator. The question before the court was whether the legacy to it lapsed, or might by cy-pres be applied to other charities. *Held*, by the Court of Appeal, affirming the judgment below, that the legacy lapsed, since the object of the bequest had ceased to exist, and cy-pres could not be applied because the intent of the testator was to give the legacy not to charity in general, but to the particular institution known as St. Thomas Seminary. *In Re Rymer, Rymer* v. *Stanfield*, L. R. [1895] 1 Ch. D. 19.

There is no doubt of the correctness of the rule of law here laid down, though considering the terms of the will and the well known liberality with which the doctrine of cy-pres is applied, one is surprised that the court did not find that the main object of the bequest was a general charitable purpose.

See Gray's Rule against Perpetuities, § 607.

PROPERTY — WAREHOUSEMEN — CONVERSION OF GRAIN — WAREHOUSE RECEIPTS. — Laws 1876, *c.* 86, § 6, provide that no person holding grain in store should dispose of or deliver it out of the warehouse without the express authority of the owner of the grain, and the return of the receipt given therefor. Defendant was convicted of a violation of this statute. His receipt for the grain contained a condition to the effect that he reserved an option, either to deliver the grade of wheat that the ticket called for, or to pay the bearer the market price, on the surrender of the ticket. It was *held* that this did not render the contract one of sale. It merely gave the warehouseman an option to buy when the receipt was presented, instead of returning the grain in specie. This option could only be exercised when the receipt was presented, and by the payment of the money. Conviction affirmed. *State* v. *Rieger*, 60 N. W. Rep. 1087 (Minn).

There has been some discussion as to the nature of the transaction between a warehouseman of grain and his depositors, under the conditions here set down. The principal case accords with the prevailing view, that, in such circumstances, title in the grain does not pass upon deposit, but only when the warehouseman has exercised his option; and this, though not a kernel of the original deposit remains in store, from the nature of the business. *Nelson* v. *Brown*, 44 Iowa, 455; *Sexton* v. *Graham*, 53 Iowa, 181; *Herns* v. *Raymond*, 26 Wis. 74; *Aldridge* v. *Johnson*, 7 El. & Bl. 885, 898; *Langton* v. *Higgins*, 4 H. & N. 402. 6 HARVARD LAW REVIEW, 450, at 465. But see *Chase* v. *Washburn*, 1 Oh. St. 244.

QUASI-CONTRACT — "CONTRACT EXPRESS OR IMPLIED." — The United States are not liable in tort, but only in contract, express or implied. Expense was saved to them by an arrangement, made with a contractor, whereby the plaintiff's right as patentee was deliberately disregarded. The plaintiff sets up a claim. *Held*, — 1st. That there is no unjust enrichment in a saving of expense, where no corpus of the plaintiff's passes into defendant's hands. 2d. The United States are liable in *quasi* contract only, where the circumstances would make it possible to infer a contract in fact. Affirming *Schillinger* v. *U. S.*, 24 Ct. of Claims, 278; *Schillinger* v. *U. S.*, 15 Sup. Ct. Rep. 85. See NOTES.

QUASI-CONTRACT — WHEN CAUSE OF ACTION ACCRUES. — A wife furnished her husband with money to build a house under an oral agreement that he would convey it to her when it was finished, together with certain land. After the wife's right of action for specific performance had been barred, the husband sold the land. *Held*, no new cause of action arose, and the wife cannot sue to recover the price of the land sold. *Cooley* v. *Lobdell*, 31 N. Y. Sup. 202.

The case seems analogous to the sale of a chattel by a converter, who has had possession for the period fixed by the Statute of Limitations. The chattel having become his, he is, in effect, selling his own property, and consequently, the original owner of the chattel cannot bring suit for money had and received. Keener on Quasi-Contracts, p. 177. In this case the wife could not prevent the sale, and it would seem that she acquired no new right from it.

TORTS — DEATH BY WRONGFUL ACT — ACTION DOES NOT LIE FOR NEGLIGENCE BY OMISSION. — Under a statute allowing an action "in all cases in which the death of any person ensues from injury inflicted by the wrongful act of another, and in which an action for damages might have been maintained at common law had not death ensued," it was *held*, that no action could be maintained for the death of a person killed through the defendants' negligent omission to shore up the roof of their mine. *Myette* v. *Gross*, 30 Atl. Rep. 602 (R. I.).

The language describing the wrongful act differs slightly in the statutes of the different States. In most of the statutes, in addition to the words "wrongful act," are the words "negligence," "carelessness," "omission," or "default," clearly covering a case like the present. The Rhode Island Court have construed their statute liberally to the extent of applying it to a negligent act of commission, *McCaughey* v. *Tripp*, 12 R. I. 449, but beyond that they refuse to go, *Bradbury* v. *Furlong*, 13 R. I. 15; though an extension to a case like the present would seem entirely natural and justifiable.

TORT — DECEIT — PLAINTIFF NEGLIGENT IN RELYING ON THE REPRESENTATIONS. — A vendor of land was sued for making representations as to the land, thereby inducing plaintiff to buy. *Held*, the necessary elements for maintaining an action of deceit being present, plaintiff will not be debarred because he was negligent in relying on the false statement. *Speed* v. *Hollingsworth*, 38 Pac. Rep. 496 (Kan.).

This decision is directly contrary to *Brady* v. *Finn*, 38 N. E. 506 (Mass.), criticised in 8 HARVARD LAW REVIEW, p. 365, and it is pleasant to note that Kansas is strongly in favor of what seems the fair and just view.